

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARSHALL HORWITZ, DAVID LAYTON,
RICHARD JOHNSON, and a class of similarly
situated individuals,

Plaintiffs,

v.

UNIVERSITY OF WASHINGTON, an
agency of the STATE OF WASHINGTON,

Defendant.

Case No. 2:22-cv-01555-BJR

**PLAINTIFFS' MOTION FOR RELIEF
FROM DEADLINE TO OPPOSE
DEFENDANT'S MOTION TO DISMISS
UNTIL AFTER A DECISION ON
PLAINTIFFS' MOTION TO REMAND**

MOTION

This action was brought by faculty and staff of the University of Washington (“the University”) to obtain certain benefits due under the University’s retirement plans, essentially the loss of employer matches in some circumstances not permitted by the plans. Comp. at ¶¶8-35. Since the University is an agency of the State of Washington, this is a governmental plan subject to Washington law, not ERISA or other federal law. *Id.* at ¶7; UW Mot. to Dismiss at 5, n. 6, citing *Navlet v. Port of Seattle*, 164 Wn.2d 818, 831 (2008). The complaint asserts that the University violated its retirement plans, which are unilateral contracts governed by Washington law. Comp. at ¶¶6-7.

Because both Plaintiffs and Defendant UW agree this is a contract action brought under

Washington law, Comp. at 7, UW Notice of Removal at 3, UW Mot. to Dismiss at 5, Plaintiffs have moved to remand this case to King County Superior Court. There is therefore good cause to stay briefing and consideration of the University's motion to dismiss until this Court has determined whether it has any jurisdiction to consider the motion.

Good cause exists to stay briefing and consideration of the University's motion to dismiss because "a court must have jurisdiction over a claim before it can dismiss it." *Peterson v. Kennewick*, 2018 WL 6573155, at * 3 (W.D. Wash. 2018). This Court has explained that federal courts should first consider the question of jurisdiction to prevent the entry of orders that would be void for lack of jurisdiction (*id.* at *3):

"To avoid entering a default [or other] judgment that can be later successfully attacked as void, a court should determine whether it has the power, i.e., the jurisdiction, to enter the judgment [or order] in the first place." *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999); see also Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Indeed, a district court has an "affirmative duty to look into its jurisdiction over both the subject matter and the parties." *In re Tuli*, 172 F.3d at 712.

In that action, the Court found that the case must be remanded and denied pending motions by both parties as moot because the Court lacked subject matter jurisdiction. *Id.* at *5.

Given that the Court will first consider the motion to remand in order to determine whether it has jurisdiction to consider the University's motion to dismiss, the Court should stay briefing and consideration of the University's motion to dismiss until the jurisdictional issue has been resolved. In the alternative, if the Court wishes to set a certain date for the briefing of the University's motion to dismiss, Plaintiffs request that the deadline to respond to the University's motion to dismiss be extended to January 6, 2023.

Plaintiffs discussed their request to be relieved from the deadline to oppose the Defendant's motion to dismiss. The Defendant stated that it was not opposed to a reasonable extension and would stipulate to an extension of time to respond to its motion to dismiss but did oppose Plaintiffs' request on the basis that Plaintiffs' request would result in an indefinite extension. See A. Strong [12/6/22] Dec.

1 DATED this 6th day of December, 2022.

2 Respectfully submitted,

3 BENDICH, STobaUGH & STRONG, P.C.

4 /s/ Alexander F. Strong

5 Alexander F. Strong, WSBA #49839

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9 *Attorney for Plaintiffs*

DECLARATION OF SERVICE

I, Anders Forsgaard, declare that I effected service of the following documents on the parties listed below through the CM/ECF system:

Document(s):

1. Plaintiffs' Motion for Relief from Deadline to Oppose Defendant's Motion to Dismiss Until After a Decision on Plaintiffs' Motion to Remand
2. Declaration of Alexander F. Strong

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Attorneys for University of Washington

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 6th day of December, 2022.

/s/ Anders Forsgaard

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